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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) 30014200-1020	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on ___August 21, 2006___ Signature_____ Typed or printed name __Christopher P. Rauch__	Application Number 10/025,497	Filed 12/26/2001
	First Named Inventor Thorsten A. Laux	
	Art Unit 2151	Examiner Karen C. Tang

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
        Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

[X] attorney or agent of record. 45,034
Registration number _____

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

_____
Signature

__Christopher P. Rauch__
Typed or printed name

__312-876-8000__
Telephone number

August 21, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

[X] *Total of ___1___ forms are submitted.

APPLICANT:	Thorsten A. Laux, et al.	ATTY DOCKET NO.:	30014200-1020
SERIAL NO.:	10/025,497	GROUP ART UNIT:	2151
DATE FILED:	December 26, 2001	EXAMINER:	Karen C. Tang
INVENTION:	METHOD AND APPARATUS FOR PROVIDING A CLIENT BY A SERVER WITH AN INSTRUCTION DATA SET IN A PREDETERMINED FORMAT IN RESPONSE TO A CONTENT DATA REQUEST MESSAGE BY A CLIENT		

ARGUMENTS ACCOMPANYING PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

S I R:

These Arguments accompany a Notice of Appeal and a Pre-Appeal Brief Request for Review, all of which are filed in response to the Final Office Action of April 21, 2006 and Advisory Action of July 13, 2006. Please reconsider the application in view of the arguments presented below.

ARGUMENTS

Claims 1-45 are pending in the application.

In the Final Office Action of April 21, 2006, the Examiner repeated the previously-presented rejection of claims 1-45 under 35 U.S.C. §103(a) as allegedly being unpatentable over *Brandow, et al. (U.S. Patent No. 6,938,041)("Brandow")* in view of *Gu, et al. (U.S. Patent No. 6,892,230)("Gu.")* In the Advisory Action of July 13, 2006, the Examiner maintained the rejection.

As discussed in more detail below, Applicants submit that the Examiner has made clear error in the rejection. Applicants respectfully request that the application be allowed on the existing claims.

Regarding claims 1-37, 44, and 45, *Brandow* in view of *Gu* clearly fails to disclose or suggest Applicants' claimed tree data structure:

Independent claims 1, 18, 21, 44, and 45 each claim subject matter relating to searching a tree data structure that is stored in an instruction format configuration file. The tree data structure includes a plurality of instruction format nodes. Each instruction format node indicates a

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specified combination of instruction elements including a specified instruction format and having associated with it a node selection criterion.

This is clearly unlike *Brandow* in view of *Gu*, which fails to disclose or suggest Applicants' claimed tree data structure. *Brandow* teaches two types of tree data structures. *Brandow's* first tree data structure is used to query a database. *Brandow* discloses a method for querying a database using SQL statements that have been received from a client. *Brandow* 7:31-33. The SQL statements are parsed and converted into a query tree, "which <u>represents the components of the query</u> in a format selected for the convenience of the system." *Brandow* 7:36-39 (emphasis added.) The query tree is then normalized, compiled, and converted "into a set of instructions suitable for satisfying the query." *Brandow* 7:31-64.

Thus, *Brandow's* first type of tree data structure is clearly unlike Applicants' claimed tree data structure. *Brandow's* query tree is not stored in an instruction format configuration file. Further, *Brandow's* query tree does not include instruction format nodes that indicate a specified combination of instruction elements including a specified instruction format. Instead, *Brandow's* query tree nodes merely include components of a query. *Brandow* 7:36-39. Further, *Brandow's* query tree nodes do not have associated with them node selection criteria. This is simply not taught or suggested by *Brandow*. Thus, the Examiner has made a clear error in arguing that *Brandow's* first type of tree data structure discloses or suggests Applicants' claimed tree data structure.

The Examiner also has made a clear error in arguing that *Brandow's* second type of tree data structure discloses or suggests Applicants' claimed tree data structure. *Brandow's* second type of tree data structure is a clustered index for a database. *Brandow* defines a clustered index as "an index which <u>stores the data pages</u> of the records themselves on the terminal or leaf-level nodes of the index." *Brandow* 7:14-30 (emphasis added.) *Brandow* further describes that

> [f]or enhancing the speed in which the Database Server stores, retrieves, and presents particular data records, the Server maintains one or more database indexes on the table, under control of an Index Manager. A database index, typically maintained as a B-Tree data structure, allows the records of a table to be organized in many different ways.

Id. Thus, the nodes of *Brandow's* second type of tree data structure merely include the data pages of records of a database. Contrary to the Examiner's argument, nowhere does *Brandow* teach that the nodes of its tree data structure include <u>instruction format nodes that indicate a specified combination of instruction elements including a specified instruction format and having associated with it a node selection criterion</u>. In fact, *Brandow's* tree data structure's nodes fail to

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even store information that is related instruction format nodes, let alone the type of instruction format nodes claimed by Applicants. Instead, *Brandow's* nodes merely store <u>data pages</u> of records. *Id.*

Gu also fails to disclose or suggest a tree data structure that is stored in an instruction format configuration file. Instead, *Gu* merely discloses a Description Document that has a tree of nested Devices that can be traversed to find a matching Device. *Gu* 16:66-67. This clearly fails to relate to a tree data structure that includes instruction format nodes that indicate a specified combination of instruction elements including a specified instruction format and having associated with it a node selection criterion.

Therefore, the Examiner has made a clear error in rejecting Applicants' claims 1, 18, 21, 44, and 45 based on *Brandow* in view of *Gu*.

Claims 2-17, 19-20, and 22-37 depend directly or indirectly from claims 1, 18, or 21 and are therefore allowable for at least the same reasons that claims 1, 18, and 21 are allowable.

<u>Regarding claims 38-41, *Brandow* in view of *Gu* clearly fails to disclose or suggest Applicants' claimed tree data structure:</u>

Independent claim 38 claims subject matter relating to a tree data structure having entries that each comprise a plurality of instruction format nodes. Each instruction format node indicates a specified combination of instruction elements including a particular instruction format and having associated with it a node selection criterion.

This is clearly unlike *Brandow* in view of *Gu*, which fails to disclose or suggest Applicants' claimed tree data structure. As discussed above, *Brandow's* first and second types of tree data structures do not include instruction format nodes that indicate a specified combination of instruction elements including a particular instruction format and do not have associated with them node selection criteria. Instead, *Brandow's* tree data structures merely represent the components of a query or include data pages of the records of a database. *Brandow* 7:31-64; 7:14-30.

Gu also fails to disclose or suggest a tree data structure that is stored in an instruction format configuration file. Instead, *Gu* merely discloses a Description Document that has a tree of nested Devices that can be traversed to find a matching Device. *Gu* 16:66-67. This clearly fails to relate to a tree data structure that includes instruction format nodes that indicate a specified combination of instruction elements including a specified instruction format and having associated with it a node selection criterion.

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Therefore, the Examiner has made a clear error in rejecting Applicants' claim 38 based on *Brandow* in view of *Gu*.

Claims 39-41 depend directly or indirectly from claim 38 and are therefore allowable for at least the same reasons that claim 38 is allowable.

Regarding claim 42, *Brandow* in view of *Gu* clearly fails to disclose or suggest Applicants' claimed tree data structure:

Claim 42 claims a method comprising preparing a tree data structure consisting of a plurality of instruction format nodes, each instruction format node indicating a particular combination of instruction elements including a specified instruction format and having associated with it a node selection criterion.

This is clearly unlike *Brandow* in view of *Gu*, which fails to disclose or suggest Applicants' claimed tree data structure. As discussed above, *Brandow's* tree data structures do not include instruction format nodes that indicate a specified combination of instruction elements including a particular instruction format and do not have associated with them node selection criteria. Instead, *Brandow's* tree data structures merely represent the components of a query or include data pages of the records of a database. *Brandow* 7:31-64; 7:14-30.

Gu also fails to disclose or suggest a tree data structure that is stored in an instruction format configuration file. Instead, *Gu* merely discloses a Description Document that has a tree of nested Devices that can be traversed to find a matching Device. *Gu* 16:66-67. This clearly fails to relate to a tree data structure that includes instruction format nodes that indicate a specified combination of instruction elements including a specified instruction format and having associated with it a node selection criterion.

Therefore, the Examiner has made a clear error in rejecting Applicants' claim 42 based on *Brandow* in view of *Gu*.

Regarding claim 43, *Brandow* in view of *Gu* clearly fails to disclose or suggest Applicants' claimed template that describes at which places, in an instruction data set, specified instruction elements can be placed:

Claim 43 claims a method comprising selecting a specified instruction format template dependent on at least one of client properties and resource properties. The template describes at what places, in an instruction data set, specified instruction elements can be placed.

This is clearly unlike *Brandow* in view of *Gu*. *Brandow* discloses that its templates can

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be used to create objects. *Brandow* 15:56. However, nowhere does *Brandow* disclose or suggest a template that describes at what places in an instruction data set specified instruction elements can be placed.
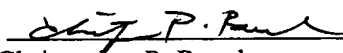
Gu also teaches using templates, however, *Gu* also fails to disclose or suggest a template that describes at what places in an instruction data set specified instruction elements can be placed. Instead, *Gu* merely discusses how its templates are used to declare protocols. *Gu* 52:66.

Therefore, the Examiner has made a clear error in rejecting Applicants' claim 43 based on *Brandow* in view of *Gu*.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-45 are patentable. It is therefore submitted that the application is in condition for allowance. Notice to that effect is respectfully requested.

Respectfully submitted,

_____ (Reg. No. 45,034)
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